

MAR 08 2006

LUTHER D. THOMAS, Clerk
By: *[Signature]*
Deputy Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

RON BOSTON,

Plaintiff,

v.

KIM BERRY,¹

Defendant.

CIVIL ACTION

NO. 1:05-CV-2991-RLV

O R D E R

This matter comes before this court on the Magistrate Judge's Report and Recommendation [Doc. No. 5]. On November 8, 2005, the plaintiff filed a *pro se* complaint alleging civil rights employment discrimination under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq. On November 22, 2005, Magistrate Judge Joel M. Feldman granted the plaintiff's request to proceed *in forma pauperis*. Additionally, Magistrate Judge Feldman ordered the plaintiff to file an amended complaint within twenty days. The amended complaint was to contain a short and plain statement articulating how the defendant discriminated against him on the basis of disability. Furthermore, Magistrate Judge Feldman ordered

¹In his November 22, 2005, order, the Magistrate Judge noted that the plaintiff apparently had improperly named as the defendant in his complaint his former supervisor, Kim Berry, rather than his employer. Magistrate Judge Feldman noted that the plaintiff's right-to-sue letter issued by the Equal Employment Opportunity Commission ("EEOC") indicated that the plaintiff was employed by Siemens Energy Automation.

the plaintiff to comply with certain directions so that service of his complaint could be perfected upon the proper defendant [Doc. No. 3]. It is undisputed that the plaintiff failed to comply with that order.

On January 10, 2006, Magistrate Judge Feldman issued an order for the plaintiff to show cause in writing and to appear in person to explain why the case should not be dismissed for want of prosecution pursuant to Local Rule 41.3 [Doc. No. 4]. In the same order, Magistrate Judge Feldman advised the plaintiff "if he fails to comply with this order, his case may be dismissed." The plaintiff failed either to appear in person or submit any reason in writing explaining why he had failed to comply with the November 22, 2005, order.

On January 23, 2006, Magistrate Judge Feldman recommended that this case be dismissed for want of prosecution because the plaintiff had failed to amend his complaint and because he had failed to appear and show cause why the case should not be dismissed [Doc. No. 5]. On February 3, 2006, the plaintiff submitted a hand-written letter in an attempt to explain his failure to appear for his court date. According to the plaintiff, "I did not received the letter on time and on the 19th on my way to [required of the status] [sic], I was pulled over by the Cobb

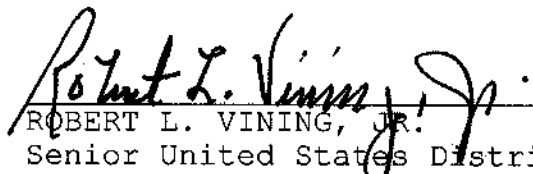
County Police."² Also the plaintiff stated that he was "going through some other personal things that has only given me this time to respond to the actions of the Court."

The plaintiff was given two opportunities by Magistrate Judge Feldman to remedy the various defects of his complaint. However, he failed to comply with Magistrate Judge Feldman's specific instructions contained in his November 22, 2005, and January 10, 2006, orders. Moreover, the court finds it telling that the plaintiff did not submit a written excuse for his failure to attend the January 18, 2006, show cause hearing until February 3, 2006, ten days after Magistrate Judge Feldman had issued his Report and Recommendation. Moreover, the plaintiff's proffered excuses contained in his February 3, 2006, hand-written letter are entitled to little weight because the plaintiff failed to address the clear requirements and directions of Magistrate Judge Feldman's November 22, 2005, and January 10, 2006, orders.

² Magistrate Judge Feldman's January 10, 2006, order required the plaintiff to appear on January 18, 2006, not January 19, 2006.

After carefully considering the report and recommendation of the magistrate judge, the court receives it with approval and adopts it as the opinion and order of this court. Therefore, the plaintiff's claims are **DISMISSED WITHOUT PREJUDICE** for want of prosecution pursuant to Local Rule 41.3(A)(2).

SO ORDERED, this 8th day of March, 2006.


ROBERT L. VINING, JR.
Senior United States District Judge